

## **Exhibit 6**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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USA BASEBALL, THE NATIONAL HIGH  
SCHOOL BASEBALL COACHES ASSOCIATION,  
DR. PETER BERG, JUAN HERNANDEZ, DENNIS  
CANALE, MEL ZITTER, MICHAEL CRUZ, TITO  
NAVARRO, JOHN TORRES, EASTON SPORTS,  
INC., WILSON SPORTING GOODS CO.,  
RAWLINGS SPORTING GOODS COMPANY, and  
HILLERICH & BRADSBY CO.

Plaintiffs,

- against -

Civil Action No. 07-CV-3605

CITY OF NEW YORK,

Defendant.

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**DECLARATION OF DEWEY CHAUVIN**

I, Dewey Chauvin, depose and state as follows:

1. I am the Director of Baseball Bat Engineering for Easton Sports, Inc. ("Easton"). I have held this position for 7 years. I have worked in the production and manufacture of baseball bats for over 15 years. If sworn as a witness, I could testify competently to the facts contained herein.

2. Easton manufactures several different kinds of bats, including wood bats, metal bats, and non-wood composite bats. As part of my duties as Director of Bat Engineering, I am responsible for the construction and design of all Easton bats, including its metal and non-wood composite bats.

3. Each adult non-wood baseball bat model sold by Easton conforms to the "Ball Exit Speed Ratio" ("BESR") specifications set forth by the National Collegiate Athletic Association ("NCAA") and the National Federation of State High School Associations ("NFHS"). The BESR regulates the speed at which a ball may be hit off the metal, nonwood composite and wood composite bats used in high school or college play.

4. Easton, and to my knowledge every other bat manufacturer, has the knowledge and technical capability to make changes to correspond to bat performance, and has done so to respond to regulations.

5. In fact, when this rule was adopted, Easton had to utilize this knowledge to redesign its bats so that the exit speed of a ball off these bats would not exceed the limitations. Easton did so primarily through thickening the walls of its aluminum bats. The thickening of the walls also made these bats heavier, and thus more difficult to swing at a high velocity in the field.

6. In addition to thickening the walls of its bats, Easton also changed the angles of the carbon fibers in its composite bats in order to stiffen the barrels so that the ball could not be hit at exit speeds that would exceed the specifications of the NCAA and NFHS.

7. The materials from which the bats are made are irrelevant to Easton's ability to make bats that comply with the rules set forth above. It is possible to make a bat comprised entirely of metal materials that will hit a ball with lower velocity than would a wood bat of equal size. In fact, Easton today sells basic model metal bats that have lower exit velocities than its premier metal and composite bats.

8. The same is true of composite materials. Wood composite and non-wood composite bats can be constructed to out-hit wood or metal bats, or hit at a level lower than wood or metal bats.

9. There is nothing inherent in the characteristics of metal or non-wood composites that necessarily makes them hit better or worse than wood. For example, bats may differ in several ways. Some metal bats are hollow and have a trampoline effect that can affect performance, nonwood composite bats may or may not be hollow, and thus do not necessarily have a trampoline effect. Many wood bats have strong "handle-flex" which allows that barrel of the bat to whip into the point of contact and hit the ball harder. Metal and nonwood composite bats may or may not have a similar effect. Differences in these factors mean that depending on the design of the bats, metal and nonwood composite bats may or may not outperform wood bats.

10. This is why the distinction between wood composite and non-wood composite bats set forth in the New York City Bat Ordinance makes little sense. The material contained in

the bat does not necessarily relate to the speed at which a ball can be hit. The performance differences that can be achieved are in the design, not the materials alone.

11. A small minority of composite bats also contain wood. The existence of wood in some composite bats does not necessarily affect the performance of the bat. For example, at least one available wood composite bat is composed of nearly identical materials to Easton's non-wood composite bat. Easton's non-wood composite bat consists of carbon fiber, epoxy, and fiber glass. This particular wood composite bat consists of carbon fiber, epoxy, fiber glass, foam, and Kevlar, a graphite material similar to carbon fiber. These bats are composed of substantially the same materials, with the exception that the wood composite bat is wrapped in a wood veneer that is approximately 1/32 of an inch thick. This veneer amounts to no more than 5% of the bat's material. This veneer has little to no effect on the exit speed of a ball hit off this bat. The wood veneer serves only the cosmetic purpose of making the bat appear like wood.

12. Wood bats can also vary widely in quality, depending on the particular wood used, as well as the kind of wood. Bats can be made of Northern White Ash, Maple, or other materials. The quality of the wood used in the bat can affect durability and performance.

13. I understand that the New York City Bat Ordinance allows wood composite bats to the extent these bats are approved by Major League Baseball for use in certain minor league seasons. I am familiar with the Major League Baseball testing protocol, which is attached as Exhibit A.

14. The Major League Baseball approval process includes a procedure for "batted ball performance testing" on wood composite bats. The methods used by Major League Baseball incorporate the same exit speed tests utilized by the NCAA to determine whether metal, non-

wood composite, wood composite bats, and wood bats pass the BESR test. For example, "Method A" of testing the performance of composite bats notes that "both the non-wood bat and solid-wood bat are impacted in accordance with the NCAA baseball bat certification protocol (September 1999) when the results are compared." Exhibit A at 2. "Method B" utilizes the "air cannon test system" "in accordance with . . . the NCAA baseball bat certification protocol (November 2005). If the calculation of the ball exit speed ratio (BESR) is then used to determine the batted ball performance of both the composite bat and solid wood bats." Exhibit A at 2.

15. The Ordinance banning the use of metal and composite bats means players in New York cannot take advantage of the bats that, as a result of Easton's extensive efforts, have been an extremely popular choice of players throughout the country.

I declare under penalty of perjury that the foregoing is true and correct.

This 28<sup>th</sup> day of May, 2007.

  
DEWEY CHAUVIN

## **Exhibit A**

## **Protocol for Compliance Testing of Nonwood Baseball Bats for Use in Short-Season Minor League Baseball**

**25-January-2007**

Major League Baseball only allows the use of bats made from a single piece of solid wood in its games. One exception to this rule is Minor League short-season, where players are allowed to use composite bats that have been evaluated and approved by Major League Baseball to be comparable to one-piece solid northern white ash bats. This protocol identifies the evaluation process used. This scientific evaluation is performed by the University of Massachusetts Lowell Baseball Research Center. If the results are satisfactory to the Office of the Commissioner of Major League Baseball, then players may use the bats made of the evaluated design in the allowed leagues.

### **Introduction**

A series of laboratory tests were developed over several years to determine the physical properties, batted-ball speeds and durability of nonwood (where nonwood is used to denote any bat that is not made from one solid piece of wood) baseball bats. The values of each property are compared to that of traditional solid northern white ash wood bats.

All testing, comparing solid-wood bats and nonwood bats, is conducted in the laboratory. Batted-ball performance comparisons are made using the procedures developed for certifying nonwood bats for use in college and high school baseball. Durability comparisons are made using several different impact sequences in a durability testing system. Bat ultimate strengths and flexural stiffnesses are measured by static loading tests.

Major League Baseball will consider composite bats for approval when they are similar to solid-wood bats. The composite bats must have a performance very similar to wood. The composite bats must look like a wood bat. Composite bats are often desirable because they can be more durable than solid-wood bats, but an evaluated bat must not be too durable (i.e., the bat should be able to break when jammed on an inside pitch). Other physical properties (i.e., weight, barrel diameter, length, moment of inertia, modal properties, strength and stiffness) should also be similar to bats made from a single piece of solid wood. Some evaluated bats have included bats made from laminated pieces of wood and others have had sections made from fiber-reinforced composites.



### Inertial and Physical Characteristics

The length, weight, barrel diameter, center of gravity (CG) and mass moment of inertia (MOI) are measured for a minimum of two samples of compliance bats and two similar-length solid-wood ash baseball bats. The MOI is effectively the measurement of the "swing weight" of the bat. If a composite bat were to have a lower MOI than the solid-wood bat, the composite bat would be easier to swing. A single compliance bat will also be cut from end to end to determine the internal structure of the bat.

### Modal (Vibration) Testing

Modal testing is performed on a minimum of one nonwood bat and one solid-wood bat of similar length. The natural frequencies of the first and second bending modes are measured along with the locations of the nodes of the primary (first) mode of vibration. The natural frequencies are a measure of the bat's flexural stiffness with lower natural frequencies representing a more flexible bat.

### Batted-Ball Performance Testing

Batted-ball performance testing is used to evaluate if the nonwood bat has any performance difference from that of solid-wood bats. A minimum of one nonwood bat and one solid-wood bat must be compared using either Method A or B.

#### Method A:

Batted-ball performance testing is conducted using a machine with two separate motors, one motor swinging the bat at a speed of  $66 \pm 1$  mph at the 6-in location and the other motor swinging an arm holding a major league baseball, where the baseball speed is  $70 \pm 2$  mph. The batted-ball speed is measured immediately after impact. Both the nonwood bat and solid-wood bat are impacted in accordance with the NCAA Baseball Bat Certification Protocol (September 1999) and the results are compared.

#### Method B:

Batted-ball performance testing is conducted using an air cannon test system that fires a major league baseball at  $136 \pm 2$  mph into the baseball bat that is at rest and mounted on a pivot allowing it to freely rotate after impact. These tests are performed in accordance with the ASTM Standard F2219-05 and the NCAA Baseball Bat Certification Protocol (November 2005). The calculation of the Ball Exit Speed Ratio (BESR) is then used to determine the batted-ball performance of both the composite bat and solid-wood bats. The performances of both bats are compared to determine if there is a performance advantage of swinging either bat.

### Static-Strength and Flexural Stiffness Testing

Static-strength tests are performed on a minimum of three nonwood bats and three solid-wood bats using a three-point bending setup. The lower supports are located near the node locations of the primary bending mode. The load is applied through a 3-in. diameter loading block made of ash and located at the midpoint between the supports. The loads are measured and applied using an Instron, which is a universal testing machine. The loading condition is representative of a failure mode that could cause handle fracture during field play.

### High-Speed Durability Testing

High-speed durability tests are performed on a minimum of five nonwood bats and five solid-wood bats using the durability test system. A minimum of three of the following five different impact sequences must be used to compare pairs of nonwood and solid-wood bats with matching lengths and weights. During each sequence, high-speed video is saved to allow for slow-motion analysis of each break. Each separate comparison will be used to understand the durability of the nonwood bats and to determine if the nonwood is appropriate for use in short-season leagues.

1. One single impact at the 19-in. location (measured from the barrel end) at an impact velocity of about 135 mph
2. Repeated impacts at the 11-in. (inside hit) location starting at an impact velocity of 105 mph and increasing by 5 mph with each subsequent impact
3. Repeated impacts at the 2-in. (outside hit) location starting at an impact velocity of 130 mph and increasing by 5 mph with each subsequent impact
4. Multiple impacts starting at the 6-in. (typical sweet spot) location with an impact velocity of 160 mph and stepping in towards the handle by 1-in. increments with each subsequent impact. The velocity is adjusted according to impact location, keeping the 6-in. combined pitch/swing velocity constant at 160 mph.
5. Multiple impacts starting at the 6-in. (typical sweet spot) location with an impact velocity of 160 mph and stepping out towards the barrel end by 0.5-in. increments with each subsequent impact. The velocity is adjusted according to impact location, keeping the 6-in. velocity constant at 160 mph.